

## § 15f.24

testimony, exhibits, affidavits, depositions, briefs, memoranda of law, and all pleadings, motions, papers, and requests filed in the proceeding, including rulings, and the proposed determination by an ALJ (if applicable) shall constitute the exclusive record for the final determination.

### § 15f.24 When and in what form will a final determination be made on my complaint by USDA?

(a) The ALJ will make a proposed determination orally at the close of a hearing, or in writing within 35 days. The ALJ may recommend dismissal of your complaint on the basis of a finding that it is not an eligible complaint; recommend denial of your eligible complaint on the merits; or make a proposed finding of discrimination on your eligible complaint and recommend to award you such relief as would be afforded under the applicable statute or regulation under which the eligible complaint was filed. The proposed determination will become the final determination 35 days after it is made, unless you request review of the proposed determination by the ASA. The ASA also may review the proposed determination on his or her own initiative. If the ASA reviews the proposed determination, he or she will allow the parties a reasonable opportunity to file briefs in support or opposition to the proposed determination, and afterwards file a final determination within 35 days after you request review of the proposed determination.

(b) To the maximum extent practicable, a final determination will be filed within 180 days after you filed your Section 741 Complaint Request.

### § 15f.25 Will USDA pay my attorneys fees if I win?

If you prevail on your eligible complaint, either in whole or in part, after a proceeding before an ALJ under the procedures in this subpart, you may be eligible for an award of attorneys fees as a prevailing party under the Equal Access to Justice Act (EAJA), 5 U.S.C. 504. To get an EAJA award, you must file an application for such fees with the ALJ within 30 days after the final determination is made. Instructions for filing an EAJA application and obtain-

## 7 CFR Subtitle A (1-1-03 Edition)

ing an EAJA award are contained in 7 CFR part 1, subpart J. The ALJ must follow those rules, and not these Section 741 Complaint Request rules, in making any EAJA award.

### Subpart E—What If I Do Not Agree With The Final Determination by USDA?

#### § 15f.26 May I seek judicial review of the final determination?

Section 741 provides that you have at least 180 days after a final determination denying your eligible complaint under these rules to seek judicial review in the United States Court of Federal Claims or a United States District Court of competent jurisdiction.

### Subpart F—How Do I Count Days For Purposes Of Deadlines and What Happens If I Miss A Deadline In These Rules?

#### § 15f.27 When is something considered “filed” as required by these rules and to whom do I need to give copies of what I file?

A document, or other item, that must be “filed” under these rules is considered filed when postmarked or when it is received and date-stamped by the Docketing Clerk.

#### § 15f.28 When I or someone else has to do something within a certain number of days, how will USDA or the ALJ count the days?

Unless otherwise specifically noted, a “day” refers to a calendar day and a document that must be filed by a certain date must either be postmarked on that date or received by the Docketing Clerk on that date. For documents that must be or are “filed” under these regulations, you count the number of days after filing starting with the day after the filing date as day one. For other time periods, you calculate the time period by counting the day after receipt by the party as day one. If the last day of a time period expires on a Saturday, a Sunday, or a Federal holiday, the last day of the time period will expire on the next business day.